

(2) “Broadly stated, hearsay is an out-of-court statement that is offered as evidence of the truth of the matter asserted.” *U.S. v. Malpica-Garcia*, 489 F.3d 393, 396 (1st Cir. 2007); citing Fed. R. Evid. 801. When an out of court statement is not used to prove the truth of the matter asserted it is not hearsay. *U.S. v. Hansen*, 434 F.3d 92, 100

n. 9 (1st Cir. 2006). Here, the statements sought to be excluded as “hearsay” simply are not hearsay. The fact that an officer arrived at the scene of Plaintiff’s altercation with police and stated “what are all my cars doing here” and “get off of him” will be offered *not* for the proof of the matters asserted in those statements, but rather to show the declarant’s alarm at what he was witnessing upon his arrival at the scene. The statements support Plaintiff’s allegation that an unlawful beating was being administered by the police who arrived first at the scene and Plaintiff will be available to be cross-examined on whether those statements were actually made.

(3) In any event, even if the statements were “hearsay” (which Plaintiff does not concede), they should still be admitted to show the state of mind of the declarant and/or as statements against interest. *See Horton v. Allen*, 370 F. 3d 75, 85 (1st Cir.2004) (“The premise for admitting hearsay statements evidencing state-of-mind is that such statements are reliable because of their spontaneity and [the] resulting probable sincerity.”) (internal quotation marks and citations omitted); *see also U.S. v. Ciocca*, 106 F. 3d 1079, 1085, n. 2 (1st Cir. 1997) (admissions against interest are properly admissible under Fed. R. Evid. 801 (d) (2) (A) and 804 (b)(3)). In this matter, the statements would not be used to show that, indeed, all of the departments cars had responded to the scene of Houde’s beating or that there were several police officers on top of Houde (a fact that is not in dispute), but rather to show the responding officer’s state of mind when he arrived at the scene and as a statement against the penal interest of the Worcester Police Department.

WHEREFORE, Plaintiff requests that the Court deny Defendants’ motion in limine as to so-called hearsay statements.

Respectfully submitted,

PLAINTIFF DANIEL HOUDE,

By his attorney,

/s/ Timothy J. Perry

Timothy J. Perry (BBO #631397)

PERRY, KRUMSIEK & JACK LLP

One McKinley Square

Boston, MA 02109

(617) 720-4300

facsimile (617) 720-4310

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/s/ Timothy J. Perry

Timothy J. Perry